

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**ARUSHA DISTRICT REGISTRY**  
**AT ARUSHA**  
**CRIMINAL SESSION CASE NO. 9 OF 2022**  
**REPUBLIC**  
**VERSUS**  
**MUSSA LEMWAI**  
  
**PROCEEDINGS**

Date: 20/7/2022

Coram: D. C. Kamuzora, J

Ms. Riziki Mahangu, State Attorney for the Republic

Mr. Richard Manyota, Advocate for the accused person

Accused Yohana Simoni is present

B/C: Mariamu Kimomwe

Notice of trial on information for manslaughter c/s 195 of the Penal Code [Cap 16. R.E 2022] was dully served on accused person who is now before this court this 20/7/2022.

**Riziki Mahanyu (SA):** the matter was scheduled for plea taking and preliminary hearing, we are ready to proceed.

**Richard Manyota, Defence Advocate:** We are ready to proceed

**Court:** Information of manslaughter c/s. 195 and 197 of the Penal Code [Cap 16 RE 2019] is read over and explained to the accused person in Swahili language which he understands and he is asked in terms of section 275 of the CPA to plea thereto.

**Accused:** Ni kweli nilimuua ila sikukusudia (It is true that I killed the deceased but it was not intentional)

**Court:** the plea of guilty is entered against the accused person for the offence of manslaughter.

**Sgd: D.C. KAMUZORA**

**JUDGE**

**20/07/2022**

**Riziki Mahanyu (SA):** Facts are ready I pray to read facts.

**Richard Manyota, Defence Advocate:** We are ready to proceed

### **FACTS OF THE CASE**

That, the accused is charged for the offence of manslaughter under section 195 and 198 of the Penal Code Cap 16 RE 2019.

That, the accused in this case is Mussa Lemwai, 21yrs at the time he committed the offence, Zigua, a resident of Moshono in Arusha Municipality, Arusha Region.

That, the deceased is Emmanuel Simoni Ikingu, and on the date the incident occurred, on 17/11/2019 the deceased went home drunk and asked his male child if he had already eaten and the child responded that he had already eaten.

That, the deceased became furious and started punishing the child and the deceased's wife asked him as to why he was beating the child. The deceased stopped beating the child and started beating his wife.

That, the neighbour tried to stop the fight but unsuccessfully as the neighbour of the of the deceased one Erika Wilson who is the accused's sister went to beg the deceased to stop beating his wife and the accused stopped beating his wife and started to beat Erika Wilson.

That, when the husband of Erika Wilson discovered that his wife was being beaten by the deceased, he interfered and they started fighting with the deceased.

That, while fighting the accused appeared and tried to help his brother-in-law and they succeeded to lock the deceased in his room.

That, after sometimes the deceased did take the Panga and break the door and went outside and he started threatening people who were at the scene as he was telling them that he will kill someone.

That, when the accused saw that, he did take the stone and did hit the deceased on the head and the deceased did fall down and he lost his consciousness.

That, the deceased was sent to Mount Meru Hospital for treatment and he died the next day.

That, the deceased's body was examined and the post-mortem report indicate that the cause of death was brain injury.

That, on 18/11/2019, the accused was arrested and sent to the police station for interrogation and the accused confessed to causing of the death of the deceased.

The accused was then charged with the offence of manslaughter. That is all.

**Ms. Riziki Mahanyu:** - I pray to tender the Post-mortem Examination report as exhibit if no objection from the defence side.

**Mr. Manyota:** No objection.

**Court:** Report on Post-mortem Examination is admitted in court as exhibit PE1.

**Sgd: D.C. KAMUZORA**

**JUDGE**

**20/07/2022**

**Court:** In terms of section 192 (2) of the CPA, the accused person is refreshed on the facts read over by the State Attorney and he is now asked to state the facts which are admitted and the facts not admitted.

**Accused:** I admit to all facts read to me by the State Attorney as they are correct and true.

Signature by Accused person Mussa Lemwai (Signed)

Signature by the defence counsel Mr. Richard Manyota (Signed)

Signature by State Attorney Ms. Riziki Mahanyu (Signed)

**Court:** The accused person has voluntarily admitted to all the facts read over to him which in my considered view they constitute the offence of manslaughter.

**Sgd: D.C. KAMUZORA**

**JUDGE**

**20/07/2022**

### **COURT FINDINGS**

Following the accused plea to the offence of Manslaughter and subsequent admission to the facts of the case, the accused plea is found to be unequivocal. Based on the accused unambiguous plea of guilty, I hereby convict the accused person for the offence of manslaughter c/s.195 and 198 of the Penal Code Cap 16 R.E. 2019.

**Sgd: D.C. KAMUZORA**

**JUDGE**

**20/07/2022**

### **PREVIOUS CRIMINAL RECORDS**

**Ms. Riziki Mahanyu (SA):** I have no previous criminal records of the accused person. We pray that the accused be punished to be a lesson to people with similar behaviour. The accused did attack the deceased on the head knowing that such attack can cause big harm to the deceased. He could have reported the matter to the police station as there was other way to solve the matter instead of taking decision to attack the deceased.

### **MITIGATION**

**Defence Counsel Mr. Richard Manyota:** the accused is the first offender as said by the state attorney. The deceased is the one who started the fight by beating his son and later his wife and then Erika Wilson. The cause of death of the deceased occurred because the deceased tried to attack people with panga and the accused was defending himself and he wanted to stop the fight. If the accused could have not done so, may be, more people could have been injured or killed by the deceased who had a panga. The accused has a family which

depend on him and he has a little child aged 3 years thus the sentence will affect his family which depend on him.

It should be noted that, at all time the accused was under police custody, his child was being taken care of the deceased's wife. The accused had admitted to the offence thus serving the time of the court and costs of the case. It is our prayer that this court consider to give the accused the lenient sentence including acquittal as he had remorse over the offence. That is all.

## **SENTENCE**

I have considered the submissions by the counsel for both parties on the previous criminal records of the accused. I have also considered mitigating factors as submitted by the defence counsel, the accused instant plea of guilty and the time spent in prison waiting for trial. I also took into consideration the law and sentencing manual which give guidance in relation to sentencing procedures. The accused is the first offender and when the information was read to him, he instantly pleaded guilty before commencement of trial. These are among the factors this court is considering in sentencing the accused.

I have also taken into account the circumstance of the incident which shows that there was a fight and the deceased somehow was the source

of the chaos that happened on the date of incident resulting to his death. The witnesses' statements and facts read over shows that the deceased went home while drunk and started beating his child. When his wife interfered, he started beating his wife and when the neighbours tried to stop him the fight shifted to them and the accused was trying to stop him from causing injuries to other people. The beating therefore was not intended to kill the accused rather to cool him down and stop him from causing injuries and read in the fact he was holding panga which he was threatening to use against other people at the scene.

In considering the conduct of the accused and mitigation factors, the actual sentence the accused deserve is 3years in prison. But as he pleaded guilty and served the court's time in dealing with the case, I reduce 1/3 of 3years which is 10 months. I also exclude the period spent in prison which is one (1) month and 17 days counted from the first date he was aligned before the court, that is from 02/12/2019 to the date he was released on bail on 20/01/2020. Due to the fact that the accused is the first offender and in considering the mitigation, I reduce the period of one year. Thus, the accused is supposed to serve the sentence of one (1) year, 8months and 17 days in prison but as the circumstances reveal that the accused contributed to the chaos resulting to his death, the accused is conditionally discharged for the remained period of 1year, 8months and



17 days. He is ordered to behave and act in orderly manner in the society and not to involve in any fight or criminal conduct.



**D.C. KAMUZORA**

**JUDGE**

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**Court:** Right to appeal to the Court of Appeal against sentence is fully explained.



**D.C. KAMUZORA**

**JUDGE**

**20/07/2022**



